

Chapter 9-4

Change of Municipal Boundaries

9-4-1. Annexation of territory on petition by voters and landowners. The governing body of a municipality, upon receipt of a written petition describing the boundaries of any territory contiguous to that municipality sought to be annexed to that municipality, may by resolution include such territory or any part thereof within such municipality if the petition is signed by not less than three-fourths of the registered voters and by the owners of not less than three-fourths of the value of the territory sought to be annexed to the municipality.

For purposes of this section, the term, contiguous, includes territory separated from the municipality by reason of intervening ownership of land used as a golf course, railroad, or any land owned by the State of South Dakota or any subdivisions thereof.

9-4-1.1. Municipalities authorized to enter into annexation and development agreements with landowners. A municipality may enter into an agreement with any landowner specifying the conditions under which the landowner's property may be annexed pursuant to § 9-4-1 or developed.

9-4-2 to 9-4-4. Repealed by SL 1979, ch 47, §§ 13 to 15.

9-4-4.1. Study required before annexation without petition. Except as provided by § 9-4-1, before a municipality may extend its boundaries to include contiguous territory, the governing body shall conduct a study to determine the need for the contiguous territory and to identify the resources necessary to extend the municipal boundaries.

9-4-4.2. Resolution of intent to annex--Contents for large municipalities. Based on the study provided for in § 9-4-4.1, the governing body may adopt a resolution of intent to extend its boundaries. The resolution, in municipalities of one thousand or more as determined in the last federal census, shall contain the following:

- (1) The description and boundaries of the territory to be annexed;
- (2) That ample and suitable resources exist to accommodate the orderly growth or development of the contiguous territory;
- (3) That municipal utilities and a major street network are considered in terms of the proposed boundary extension and that there is a definite timetable upon which municipal service will be extended into the contiguous territory;
- (4) The approximate cost of the extended service to the residents of the contiguous territory and the municipality;
- (5) The estimated difference in tax assessment rate for the residents in the contiguous territory;
- (6) That exclusions and irregularities in boundary lines are not the result of arbitrariness;
- (7) That there is reasonable present or demonstrable future need for annexing the contiguous territory; and

- (8) That population and census data indicate that the municipality has or may experience growth or development beyond its present boundaries.

9-4-14. Municipal airport outside corporate limits exempt from annexation restrictions--Extraterritorial jurisdiction--Application to property in another municipality. If a municipality operates an airport organized pursuant to Title 50 outside the corporate limits of the municipality, the restrictions of § 9-4-1 against annexation of noncontiguous territory do not apply to the annexation of the airport by such municipality. If the municipality annexes such airport, the municipality may exercise extraterritorial jurisdiction pursuant to chapter 11-6, but only to the extent of one and one-quarter miles of the exterior boundary of the airport property. Such one and one-quarter mile extraterritorial jurisdiction supercedes the three-mile extraterritorial jurisdiction of any other municipality or jurisdiction of any other governmental entity, except as provided in Title 50.

Such one and one-quarter mile extraterritorial jurisdiction does not include property located within the corporate limits of another municipality. However, the latter municipality may not allow any airport hazards as defined in Title 50 in its corporate limits within the one and one-quarter mile extraterritorial jurisdiction around the airport property. Prior to adoption, copies of the resolution of intent with a notice of time and place of the public hearing shall be forwarded by certified mail to the affected landowners and the county auditor, who shall then forward the resolution of intent and notice of public hearing regarding the resolution of intent to the county commissioners. The notice shall be postmarked not less than ten days and not more than twenty days before the date of the public hearing. The resolution of intent may be adopted, pursuant to chapter 9-19, with or without amendments after the public hearing. The governing body shall utilize and rely upon the records of the county director of equalization for the purposes of determining the affected landowners.

9-4-4.4. Hearing on resolution of annexation--Notice to landowners and county auditor--Adoption of resolution--Contents. The governing body shall hold a public hearing to consider extension of its boundaries within sixty days of the adoption of the resolution of intent provided for in §§ 9-4-4.2 and 9-4-4.11. Prior to adoption of the resolution of annexation, a copy of the adopted resolution of intent and a notice of the time and place of the public hearing on the resolution of annexation shall be forwarded by certified mail to the affected landowners and the county auditor, who shall then forward the adopted resolution of intent and notice of public hearing regarding the resolution of annexation to the county commissioners. The notice shall be postmarked not less than ten days and not more than twenty days before the date of the public hearing. The governing body shall utilize and rely upon the records of the county director of equalization for the purposes of determining the affected landowners. The governing body may adopt an annexation resolution, containing the description and boundaries of the territory to be annexed, pursuant to chapter 9-19, within one hundred and twenty days of the public hearing. The governing body shall consider any objections to the resolution of annexation and the adopted resolution of intent, and may adopt the resolution of annexation with or without amendments, and may also add to the resolution of annexation any amendments to the resolution of intent. No amendment may be made affecting any property not described in the original resolution.

[9-4-4.5. Petition for submission of annexation resolution to voters.](#) The required number of voters residing in the combined area of the municipality and special annexation precinct may file within twenty days after the publication of the annexation resolution a petition with the municipal finance officer, requiring the submission of the annexation resolution to a vote of the voters of the combined area of the municipality and special annexation precinct for its rejection or approval.

[9-4-4.6. Contents of referendum petition--Signatures--Verification.](#) The petition shall contain the title of the resolution or the subject of the resolution and the date of its passage. The petition shall be signed by at least five percent of the registered voters residing in the combined area of the municipality and the special annexation precinct established pursuant to § 9-4-4.8. The percentage shall be based on the number of voters in the municipality at the last preceding general election. Each voter shall add to the voter's signature the voter's place of residence, including street and house number, if any, and the date of signing. The referendum petition shall be verified in the same manner as a petition to initiate a law except that the person verifying shall state that each person signing the petition is a resident and registered voter of the municipality or special annexation precinct. No signature on the petition is valid if signed more than six months prior to the filing of the petition.

[9-4-4.7. Time of election on annexation--Referendum provisions applicable.](#) The governing body shall within ten days after the presentation of a petition pursuant to § 9-4-4.5, fix a date for holding a special election, to be on a Tuesday not less than thirty nor more than fifty days from the date of the order of the governing body. If a petition is filed on or after January first prior to the annual municipal election and within sufficient time to comply with the provisions of § 9-13-14, the question shall be submitted at that annual municipal election. The special election shall be conducted pursuant to §§ 9-20-12 to 9-20-14, inclusive, and §§ 9-20-16 and 9-20-17 and shall be under the charge of the municipal finance officer.

[9-4-4.8. Special precinct for area to be annexed--Registration lists.](#) Upon the filing of a petition pursuant to § 9-4-4.5, the county commissioners of the county in which the area to be annexed lies, shall upon request of the municipal finance officer, establish a special election precinct comprising all of the registered voters residing in the area to be annexed. The county commission shall also submit the necessary registration lists to the municipal official in charge of the election at least one day prior to the election.

[9-4-4.9. Vote required to approve annexation--Effective date.](#) The referred resolution so submitted shall become operative if approved by a majority of the votes cast, in the combined area of the municipality and special annexation precinct. If approved, it shall take effect upon completion of the canvass of the special election returns.

[9-4-4.10. Proceedings to enforce terms of resolution of annexation or resolution of intent.](#) Any person of the annexed area may institute proceedings in the circuit court to compel performance of any aspect of the resolution of intent or the resolution of annexation as finally adopted extending the municipal boundaries and services. The

proceedings shall be instituted within seven years of the adoption of the resolution of annexation.

9-4-4.11. Resolution of intent to annex--Contents for small municipalities. Based on the study provided for in § 9-4-4.1, the governing body may adopt a resolution of intent to extend its boundaries. The resolution, in municipalities of less than one thousand in population as determined in the last federal census, shall contain the following:

- (1) The description and boundaries of the territory to be annexed;
- (2) That ample and suitable resources exist to accommodate the orderly growth or development of the contiguous territory;
- (3) The estimated difference in tax assessment rate for the residents in the contiguous territory;
- (4) That exclusions and irregularities in boundary lines are not the result of arbitrariness;
- (5) That there is reasonable present or demonstrable future need for annexing the contiguous territory; and
- (6) That population and census data indicate that the municipality has or may experience growth or development beyond its present boundaries.

9-4-4.21. Transferred to § 9-4-4.11.

9-4-5. Annexation of unplatted territory subject to approval by county commissioners.

No such resolution describing unplatted territory therein may be adopted until it has been approved by the board of county commissioners of the county wherein such unplatted territory is situate. For the purposes of this section, unplatted territory is any land which has not been platted by a duly recorded plat or any agricultural land as defined in § 10-6-31.

9-4-6. Exclusion of territory from municipality on petition or by vote of governing body.

Upon a two-thirds vote of the governing body, or on petition in writing signed by not less than three-fourths of the legal voters and by the owners of not less than three-fourths in value of the property in any territory within any municipality being upon the border thereof, the governing body may by resolution exclude the territory from the municipality. However, if all the land sought to be excluded is more than one-half mile from any platted portion of the municipality, the petition must be signed by the owner only.

9-4-7. Publication of petition for exclusion of territory. No final action shall be taken by the governing body upon any petition presented in pursuance of the provisions of § 9-4-6 until notice of the presentation of such petition has been given by the petitioners by publication at least once each week for two successive weeks.

9-4-8. Petition to circuit court for exclusion of territory after refusal by governing body.

Upon the failure of the governing body to grant the request contained in a petition presented in accordance with the provisions of §§ 9-4-6 and 9-4-7, for thirty days after the last publication of the notice or upon a refusal to grant such request, the petitioners

may present their petition to the circuit court of the county in which such municipality or the greater portion of it is situated, by filing such petition with the clerk of courts.

9-4-9. Service of notice of petition to circuit court--Hearing at term or in vacation.

Notice of filing pursuant to § 9-4-8 shall be served by the petitioners upon the mayor or president of the Board of Trustees, as the case may be, together with a notice of the time and place when and where a hearing will be had upon such petition, at least ten days before the date of such hearing.

The hearing on the petition may be had by the court at a regular or special term or in vacation.

9-4-10. Court order for exclusion of territory--Dismissal of petition. If upon the hearing the court shall find that the request of the petitioners ought to be granted and can be granted without injustice to the inhabitants or persons interested, the court shall so order.

If the court shall find against the petitioners, the petition shall be dismissed at the cost of the petitioners.

9-4-11. Recording of resolution or decree changing municipal boundaries--Effective date. Whenever the limits of any municipality are changed by a resolution of the governing body or by a decree of court it shall be the duty of the mayor or the president of the Board of Trustees to cause an accurate map of such territory, together with a copy of the resolution or decree duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated, and thereupon such territory shall become and be a part of such municipality or be excluded therefrom as the case may be.

9-4-12. Annexation of territory near municipal airport prohibited--Exception. No other municipality may annex any territory within one and one-quarter miles of any parcel of land operated as a municipal airport by an airport authority organized pursuant to chapter 50-6A. However, if the governing body of the airport-operating municipality consents, by resolution, to such a proposed annexation by another municipality, the provisions of this section do not apply to the extent of the waiver provided in the consent resolution of the airport-operating municipality.

9-4-13. Annexation of territory near municipal airport between March 15, 2003 and July 1, 2003 voidable. If any municipality other than a municipality that operates a municipal airport by an airport board organized pursuant to chapter 50-6 has annexed between March 15, 2003, and July 1, 2003, any territory within one and one-quarter miles of any exterior boundary of such a municipal airport, the governing body of the airport-operating municipality may, by resolution, within sixty days of the date of such annexation, void all or any portion of such annexation within one and one-quarter miles of the exterior boundary of such municipal airport.

9-4-14. Municipal airport outside corporate limits exempt from annexation restrictions--Extraterritorial jurisdiction--Application to property in another municipality. If a municipality operates an airport organized pursuant to Title 50 outside the corporate

limits of the municipality, the restrictions of § 9-4-1 against annexation of noncontiguous territory do not apply to the annexation of the airport by such municipality. If the municipality annexes such airport, the municipality may exercise extraterritorial jurisdiction pursuant to chapter 11-6, but only to the extent of one and one-quarter miles of the exterior boundary of the airport property. Such one and one-quarter mile extraterritorial jurisdiction supercedes the three-mile extraterritorial jurisdiction of any other municipality or jurisdiction of any other governmental entity, except as provided in Title 50.

Such one and one-quarter mile extraterritorial jurisdiction does not include property located within the corporate limits of another municipality. However, the latter municipality may not allow any airport hazards as defined in Title 50 in its corporate limits within the one and one-quarter mile extraterritorial jurisdiction around the airport property.